IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.773 OF 2003

1. Ankush Raghunath Achrekar,
since deceased through legal heirs

   a) Asha Ankush Acharekar,
   res. at Devali,
   Tal Malvan

   b) Anil Ankush Acharekar
   res. at Devali
   Tal : Malvan

   c) Suhasini Ankush Acharekar
   res. at Kudal

2. Raghunath Ankush Acharekar
since deceased through legal heirs

   a) Vanita Raghunath Achareker

   b) Sachin Raghunath Acharekar

   c) Nitin Raghunath Acharekar

   all residing at Devali (Kalchi)
   Tal: Malvan ..Appellants

versus

1. Shri Gurunath Yeshwant Patkar

2. Shri Jaywant Yeshwant Patkar

3. Smt. Chitrawati Yeshwant Patkar

   Nos.1 to 3 residing at Devali,
   Tal: Malvan, Dist; Sindhudurg

4. Shri Ramesh Yeshwant Patkar

5. Shri Shashikant Yeshwant Patkar

   Respondent Nos.4 & 5 res. at
   Palav Chawl, Hanuman Galli,
   Kanjoor Village, Bhandup (E),

Mumbai 400 042. ..Respondents
(Nos.1 to 3 Orig.Plaintiffs)
(Nos.4 & 5 Orig. Defendants)

Mr.A.G.Toraskar for the Appellant

Advocate for the Respondent absent

Coram : S.R.Sathe, J.
Dated : 8th Mar, 2006

JUDGMENT.

1. Heard the learned Advocate for the appellant. Perused the judgment of the trial court as well as the first appellate court.

2. Plaintiff had filed suit simplicitor for permanent injunction restraining the defendants from obstructing plaintiffs possession of the suit land bearing Survey No.186 (227) Hissa No.2, situated at Mauje Devali, Taluka Malvan. According to plaintiffs the said land was initially in possession of their father as a tenant and on 11.4.1957 also he was in possession. It is their case that tenancy proceeding were carried out in respect of the suit land and sale certificate was granted in favour of the plaintiffs. The defendants had no concern with the suit land. However, they obstructed plaintiffs possession. Hence, plaintiff filed present suit.

3. The defendants opposed the suit claim that the land is in their possession since the time of their forefathers and orders passed by the tenancy court are not correct and they have preferred appeal against the same.

4. Both the parties adduced evidence to support their respective claims. After considering the said evidence the court came to the conclusion that plaintiffs have proved their possession of the suit land on the date of the suit and that they have become the owners of the same by virtue of the sale certificate Exhibit 46. Naturally, decree for injunction was passed in their favour.

5. The first appellate court has also recorded the finding of fact regarding the plaintiff proving their lawful possession of the suit land and the decree passed by the trial court is correct. Thus, there is concurrent finding of fact with regard to the actual possession of the plaintiffs over the suit land. Both the courts below have observed that the oral evidence of plaintiff is corroborated by documentary evidence such as 7/12 extracts for several years which go to show that the land in

question is in possession of the plaintiffs. Besides this the tenancy authorities have also after enquiry granted the sale certificate Exhibit 46 in their favour. The learned advocate for the appellant-original defendants submitted that the trial court ought to have referred the matter to the tenancy authorities to determine whether the plaintiffs are tenants and the tenancy proceeding is in fact going on and as such the appeal be admitted. However, from the perusal of the judgment it is very clear that no substantial question of law is involved in the matter. There is concurrent finding of fact which is based on the evidence on record. Thus, there is absolutely no reason to interfere with the order passed by the learned Additional District Judge. There is no substance in this appeal. Hence, the appeal is dismissed in limine.

(S.R.Sathe, J.)

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